

04-109

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMEREX GROUP, INC. and
AMEREX USA INC,

Plaintiffs,

- against -

LEXINGTON INSURANCE COMPANY AND
WESTCHESTER SURPLUS LINES
INSURANCE COMPANY,

Defendants.

) CASE NUMBER:
) 07 CV 3259 (HB)
)

) **PLAINTIFFS' RULE 56.1**
) **STATEMENT**
)

)
) Pursuant to Local Civil Rule 56.1 of the Local Rules of the United States District Court
) of the Southern District of New York, Plaintiffs AMEREX GROUP, INC., and AMEREX USA
) INC (collectively, "Plaintiffs"), by its attorney WEG and MYERS, P.C. submit the following
) statement of material facts as to which Plaintiffs contend there exists a genuine issue to be tried:
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1. Although Plaintiffs submitted a claim to Defendants under the excess policies of insurance Defendants have not compensated the Plaintiffs for its covered losses. Janese Thompson Declaration ("Thompson Decl.") at Exhibit ("Ex.") "A" at ¶¶'s 23, 29, 30, 36 and 37.

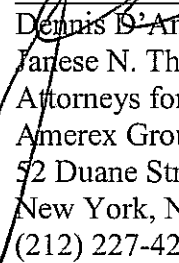
2. By Letter dated February 10, 2004, Defendants requested Examinations Under Oaths of "(a) Robert Amerini (and such other person if not Mr. Amerini, in the employ of Amerex responsible for preparation of the insurance claim)" and (b) "Robert McDonald". Mark Antin Declaration ("Antin Decl.") at Ex. "5", p. 1 of the Notice for Examination under Oath. This letter also demanded the examination of "(c) [p]ersons with most knowledge regarding sales of garments in the lines of products involved in the claim"; "(d) [p]ersons with

\$8,812,000.00 for its loss. Thompson Decl. at ¶ 29.

Dated: New York, New York
July 27, 2007

WEG AND MYERS, P.C.

By:


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most knowledge regarding shipping of the garments in the lines of products involved in this claim; “(e) [p]ersons with the most knowledge regarding the coordinated agreements with Dynamic and Apex, including any supervision, monitoring and performance of the services rendered pursuant to those garments.” Antin Decl. at Ex. “5” at p. 1.

3. Defendants Notice for Examination Under Oath also demanded numerous documents. Antin Decl. at Ex. “5” at p. 2.

4. The Defendants and its accountant had a meeting with Plaintiffs and its Accountant and Public Adjusters on July 26, 2004 at which time Defendants inspected Plaintiffs available documents. Antin Decl. at Ex. “7”.

5. By letter dated May 7, 2004, Plaintiffs informed Defendants that they intended to produce the documents requested by Defendants within its possession, custody and/or control by May 25, 2004 and that if the documents were ready to be produced by May 25, 2004, it would be produced by June 10, 2004. Thompson Decl. at Ex. “C”.

6. Defendants demanded numerous Examinations Under Oath which were taken from December 2004 through October 2005. Thompson Decl. at ¶ 15 and Ex.’s “E” through “K”.

7. The Defendants have never made a demand for appraisal nor have the Defendants initiated discussions concerning appraisal prior to the commencement of litigation. Thompson Decl. at ¶¶’s 24, 27, 28 and 30.

8. The Plaintiffs have always made its position known to the defendants, especially that it did not agree with the Defendants coverage analysis and that it expected the sum of

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